

STATE OF INDIANA

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MEMORANDUM

TO: County Auditors, County Council Members, and County Commissioners

FROM: Cheryl A.W. Musgrave, Commissioner *CWM*

DATE: July 23, 2008

SUBJECT: Department of Corrections -- Transfer of Costs for Juvenile Delinquent Offenders

1. The purpose of this memorandum is to inform county officials that the Department of Local Government Finance ("Department") will not adjust a county's property tax levy to account for the transfer of the costs of juvenile delinquent incarceration from the county to the state. The language in **bold** indicates the effective dates of the particular sections of the law, and language of particular importance. The language in **bold** and *italics* within the paragraphs titled, "Department's Notes," gives the Department's interpretation of the particular section of the law.

2. Cost of Keeping Juvenile Delinquent Offender -- Repealed. HEA 1001 (P.L. 146-2008), Section 808 repealed IC 11-10-2-3 effective on **January 1, 2009**. Before its repeal on January 1, 2009, this section requires a county that commits a "delinquent offender" [IC 11-8-1-9: "person adjudged delinquent by a juvenile court"] to the Department of Corrections to pay to the State Treasurer sixty dollars (\$60) for each day for keeping the offender.

3. Transfer of Obligation to Pay Costs for Delinquent Offenders to State. HEA 1001, Section 821, effective on **January 1, 2009**, is a non-Code provision.

a. A county may *not* impose a property tax levy *after* December 31, 2008 (i.e., pay-2009 and thereafter), for the county general fund to the extent the levy is for the reimbursement of the Department of Corrections under IC 11-10-2-3 (before its repeal on January 1, 2009) [i.e., payment to the state of \$60 for each day] or a related provision for the costs of keeping delinquent offenders.

b. **The obligation to pay the costs of keeping juvenile delinquent offenders to the extent the costs are for services delivered *after* December 31, 2008 (i.e., pay-2009 and thereafter), is transferred from the counties to the state.** The obligation transferred includes the costs of using an institution or a facility in Indiana for providing educational services that, *before* January 1, 2009 (i.e., 2008), were chargeable to a county family and children's fund, a county office, or a county under IC 20-26-11-12 [interstate transfers; tuition fee; transfer tuition], IC 20-26-11-13 [determination of transfer tuition], or IC 20-33-2-29 [compulsory attendance; duties of person

responsible for certain institutions; violations].

c. All obligations of a county to reimburse the state for the cost of keeping a juvenile delinquent offender accruing *before* January 1, 2009 and not previously forwarded to a county auditor; and any reconciliations for any period *before* January 1, 2009, must be forwarded to the county auditor *before* March 16, 2009. Upon receipt, the county auditor is required to draw a warrant on the county treasurer for the payment of the account. This account must be paid from county funds that were appropriated for the payment. The county council must appropriate sufficient funds to pay these accounts.

d. A county and the Department of Corrections may enter into agreements to resolve any issues concerning payments to vendors, payments to the county, payments to the state (including payments due for commitments before January 1, 2009), collection of amounts due to a county or the state from a parent, guardian, or custodian, and other matters affected by the transfer of the costs to the state. Any agreement, if approved by the governor and the county council, governs the responsibilities of the state and the county.

4. General Levy Adjustment Provision Not Applicable. HEA 1001, Section 869, effective on **July 1, 2008**, is a non-Code provision. For property taxes first due and payable *after* December 31, 2008, and for budget years *after* 2008 (i.e., pay-2009 and thereafter), the Department must adjust the maximum permissible property tax levy, the budget, the excise tax and local option income tax distributions, and the tax rates of any political subdivision or taxing unit as necessary to account for any changes made by HEA 1001, including the elimination of any property tax levies by this act or the transfer of governmental responsibilities.

Department's Note: This levy adjustment provision does not require the Department to adjust the county's maximum property tax levy used to pay the costs of juvenile delinquent incarceration with the Department of Corrections. There are three primary reasons for the Department's interpretation that the county's levy will not be adjusted:

First, there is no explicit provision in HEA 1001, Section 821 that requires an adjustment be made to the county general fund's maximum property tax levy to account for the take over of the juvenile delinquent offender incarceration costs by the state. For example, in the case of pre-1977 police and fire pensions, HEA 1001, Section 840 specifically requires the Department to reduce the maximum property tax levy of any civil taxing unit and special service district by the amount of the payment to be made in 2009 by the state under IC 5-10.3-11, as amended by HEA 1001, for benefits to members (and survivors and beneficiaries of members) of the 1925 police pension fund, the 1937 firefighters' fund, or the 1953 police pension fund. No such provision exists with regards to the incarceration costs.

Second, the current juvenile delinquent incarceration costs of the county are paid out of the county general fund; not a separate fund, nor collected from a separate levy specific to juvenile delinquent offender incarceration. As a result, calculating an adjustment to the maximum property levy is extremely difficult because there is more than property tax paid into a county general fund. Additionally, the number of juveniles incarcerated changes from year-

to-year. Thus, such annual fluctuations in the costs of incarceration increase the difficulty in annually adjusting the county's levy.

Lastly, in order for the Department to adjust the maximum property tax levy to account for the assumption of the Department of Corrections juvenile delinquent offender incarceration costs, an "elimination of any property tax levies" or a "transfer of governmental responsibilities" must have occurred. It is the interpretation of the Department that the state's take over of the juvenile delinquent offender incarceration costs does not constitute an "elimination of any property tax levies," as with the school general fund levy; nor does it constitute a "transfer of governmental responsibilities," as with the transfer of assessing duties from the township to the county in HEA 1001, Section 831. Therefore, no adjustment to the county's general fund maximum property tax levy is required.

If you have any questions about this memorandum, please contact your budget field representative. If you do not know your budget field representative, please go to the Department's Web site at:

http://www.in.gov/dlgf/files/Budget_Field_Staff_Assignments_and_Numbers.pdf.